IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1411 OF 2004
(FOR CONDONATION OF DELAY)
IN
CRIMINAL APPLICATION NO.1154 OF 2005
(FOR LEAVE TO FILE AN APPEAL)

The State of Maharashtra ..Applicant

Versus

Kusum Dilip Kalokhe & 2 Ors. ..Respondents

Mrs.P.H.Kantharia, Addl.Public Prosecutor for the Applicant/State.

Coram : R.M.LODHA &
R.S.MOHITE,JJ

Date : 02.03.2005.

PC

. Heard the learned Addl.Public Prosecutor for the applicant/State.

2. The present respondents (Hereinafter referred to accused persons collectively) were charged for the offences punishable under Sections 302 and 201 read with 34 of IPC in Sessions case No.33/2003. Upon conclusion of trial, IIIrd Additional Sessions Judge, Solapur vide his Judgment dated 13.8.2003 acquitted the respondents. Dis-satisfied with the Judgment of acquittal, the State preferred Criminal Appeal (Now converted in Criminal Application for leave to appeal). Since the Criminal appeal was barred by time, the application being Criminal Application No.1411 of 2004 has been taken out for

condonation of delay.

3. There is delay of 110 days. The facts averred in the application are that application for obtaining certified copy of the Judgment dated 13.8.2003 was made on the day of Judgment itself. The certified copy was ready on 30.8.2003 and delivered on 11.9.2003. The concerned Public Prosecutor alongwith his opinion forwarded the papers on 17.10.2003 to the Law & Judiciary Department for filing an Appeal against Judgment of acquittal. The proposal was scrutinised by Law & Judiciary Department and vide Government Resolution dated 21.2.2003 it was decided to prefer an Appeal. The Government Resolution dated 21.2.2003 was received by the office of the Public Prosecutor High Court (A.S.) Bombay on 25.2.2004. Appeal came to be filed on 19.3.2004.

4. The explanation that is set up in large number of cases is putforth here also and it is stated that due to heavy work load, pressure of work and non availability of stenographers, the delay occurred.

5. We are afraid such stereo-type explanation hardly shows the sufficient cause within the meaning of Section 5 of the Limitation Act.

6. Criminal application for condonation of delay, therefore, is liable to be dismissed.

7. However, we wanted to satisfy ourselves whether the case was fit for grant of leave to appeal if we condoned the delay.

8. The prosecution case was that the present respondent no.1 Kusum Dilip Kalokhe (Hereinafter to be referred as A1) was married to one Dilip Kalokhe. Dilip suffered from mental illness and was taking treatment at mental asylum, Pune. A1 delivered a female child about 8 days before the incident took place. On 29.10.2002-the date of incident, A1 came to the field which was jointly held by her brother-in-law Rajendra (PW 1) and one Shayer Chand. The field had a well. A1 was having one wrap bundle with her that she threw in the well. PW 1 and Shairchand who were sitting near the well were informed by A1 that she had killed her infant baby and threw her in the well. PW 1 did not find anything in the well immediately. Next day, PW 1 continuously searched the well. In the night at about 11.00 P.M. A1 and her mother and father (Hereinafter to be referred as A2 & A3 respectively) came near the well, removed the child and told PW1 that they would dispose off the remains of the child. On 31.10.2002 PW 1 saw ash in the one corner of the field. He lodged the report at police station. The offence punishable under Section 302 read with 34 of IPC was registered. Upon completion of investigation the 3 accused persons A1, A2 and A3

were chargesheeted. As already noticed above, by the Judgment dated 13.8.2003 they were acquitted.

9. A1 admitted in her statement under Section 313 of having given birth to a female child. She stated that it was PW 1 who might have committed the murder of the child as he did not want A-1's child in the family.

10. There is no direct evidence. We carefully examined the evidence and we find that the case of the prosecution is highly un-natural. The evidence of PW1 is not trustworthy and therefore, un-reliable. The prosecution evidence reveals that PW 1 and Shayer Chand were very good friends. The agricultural field was jointly held by both of them. It is highly un-natural that A1 for killing her child, if at all, she intended to kill her, would take the child to that agricultural field and throw the child in the well particularly when according to prosecution case PW1 was sitting near the well. The extra judicial confession said to have been made by A1 to PW1 is as unreliable as is said to have been to made to other witness. If PW1 was informed by A1 on 29.10.2002 that she had thrown her child in the well, he would not sit silently for more than 2 days before reporting the case to the police. That the husband of A1 was mentally ill is the admitted case of prosecution. In this backdrop the defence of A1 that Rajendra wanted to take advantage of the situation and did not want any child in the family

appears to be quite possible.

11. We find that the consideration of the evidence by the learned trial Court is proper and there is no perversity in the finding that prosecution failed to prove that the accused persons were guilty for the murder of the infant child.

12. No case for grant of leave is made out even otherwise.

13. Both the Criminal applications are accordingly dismissed.

(R.M.LODHA,J)

(R.S.MOHITE,J)